

REPLY EXHIBIT “C”

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ORD
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DISTRICT COURT

CLARK COUNTY, NEVADA

8 EUGENE TUMBARELLO, an Individual,
9 SHAMROCK PAINTING, INC.,

10 Plaintiff,

11 vs.

12 ELIZABETH RAMSEY, an Individual;
13 GREGG CHAMBERS, an Individual; DOES 1
through 100; and ROE BUSINESS ENTITIES I
14 through C, inclusive,

15 Defendants.

Case No.: A-17-763560-C
Dept. No.: XIX

ARBITRATION EXEMPT
(Equitable, Declaratory and
Extraordinary Relief; Title to Real
Property)

ORDER GRANTING PLAINTIFFS EUGENE TUMBARELLO AND SHAMROCK
PAINTING, INC.'S MOTION TO ENFORCE SETTLEMENT, FOR SALE OF THE
SUBJECT PROPERTIES IN SATISFACTION OF THE SETTLEMENT TERMS AND
FOR AWARD OF ATTORNEYS' FEES AND COSTS

Date of Hearing: February 12th, 2019
Time of Hearing: 9:00 a.m.

21 Plaintiffs EUGENE TUMBARELLO and SHAMROCK PAINTING INC.'s MOTION
22 TO ENFORCE SETTLEMENT, FOR SALE OF THE SUBJECT PROPERTIES IN
23 SATISFACTION OF THE SETTLEMENT TERMS AND FOR AWARD OF ATTORNEYS'
24 FEES AND COSTS, having come on for hearing on the 12th day of February, 2019. Plaintiffs
25 EUGENE TUMBARELLO and SHAMROCK PAINTING INC. being represented by their
26 counsel R. Christopher Reade, Esq. of the law firm of Premier Legal Group. Defendants
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1 ELIZABETH RAMSEY and GREGG CHAMBERS, being represented by their counsel
2 Benjamin Childs, Esq. of the Benjamin B. Childs Chfd. The Court having reviewed the papers
3 and pleadings submitted on behalf of an by the respective parties, having read the Motions,
4 Oppositions, Countermotions and/or Reply Briefs. The Court having heard argument of the
5 parties and their counsel and for good cause appearing therefor, the Court hereby enters the
6 following Findings of Fact, Conclusions of Law and Judgment.
7

8 **FINDINGS OF FACT**

9 THE COURT HEREBY FINDS that Plaintiffs EUGENE TUMBARELLO and
10 SHAMROCK PAINTING INC. [hereinafter collective "Plaintiffs"] brought this Action as
11 against Defendants ELIZABETH RAMSEY and GREGG CHAMBERS [hereinafter collectively
12 referred to as "Defendants"] regarding the ownership and investment of various monies and real
13 property in Clark County, Nevada, more specifically (1) 1201 Westlund Drive, Las Vegas,
14 Nevada 89102 [hereinafter "the 1201 Property"] and (2) 1207 Westlund Drive, Las Vegas,
15 Nevada 89102 [hereinafter "the 1207 Property"].
16

17 THE COURT FURTHER FINDS that Defendants did file appeals with the Nevada
18 Supreme Court regarding certain interlocutory Orders entered by this Court which were assigned
19 Nevada Supreme Court, Case Numbers 75520 and 76185.

20 THE COURT FURTHER FINDS that on August 15th, 2018, Plaintiffs and Defendants
21 were ordered to attend and met with Nevada Supreme Court Settlement Judge Ara Shirinian for a
22 Nevada Supreme Court Settlement Conference.
23

24 THE COURT FURTHER FINDS that on August 15th, 2018, Plaintiffs and Defendants
25 each entered into and executed a Settlement Agreement as part of the Nevada Supreme Court
26 Settlement Program memorializing the terms of the settlement entered into by and between
27 Plaintiffs and Defendants in the above-entitled Action.
28

1 THE COURT FURTHER FINDS that the Settlement Agreement executed by Plaintiffs
2 and Defendants provided that Defendants contracted, covenanted and agreed to provide Plaintiffs
3 a Promissory Note in the sum of Two Hundred Thousand Dollars (\$200,000.00) with a cross-
4 collateralized Deed of Trust securing the settlement payments which would be recorded against
5 and create a secured interest in both the 1207 Westlund Property and the 1201 Westlund
6 Property.

7
8 THE COURT FURTHER FINDS that the Settlement Agreement executed by Plaintiffs
9 and Defendants provided that the Promissory Note would have a single payment of the
10 settlement monies due no later than November 13, 2018.

11 THE COURT FURTHER FINDS that the Settlement Agreement executed by Plaintiffs
12 and Defendants provided that non-payment of the Settlement Sums by November 13, 2018
13 would be considered a breach of the settlement agreement.

14 THE COURT FURTHER FINDS that the Settlement Agreement executed by Plaintiffs
15 and Defendants provided that any costs incurred in filing or preparing the Promissory Note and
16 Deed of Trust would be the responsibility of Defendants, who were required to prepare and
17 record the Deeds of Trust on the 1207 Westlund and 1201 Westlund properties in a form
18 acceptable to Plaintiffs.

19
20 THE COURT FURTHER FINDS that the Settlement Agreement executed by Plaintiffs
21 and Defendants provided that interest accrues commencing on November 13th, 2018 on any sums
22 due at the legal interest rate of seven percent (7.0%), which was the prime interest rate pursuant
23 to NRS 99.050 as of the settlement date of August 15th, 2018.

24
25 THE COURT FURTHER FINDS that the Settlement Agreement executed by Plaintiffs
26 and Defendants provided that Defendants could obtain a full release of the Deeds of Trust if
27 Defendants paid the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) to Plaintiffs on
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1 or before November 13, 2018.

2 **THE COURT FURTHER FINDS** that the Settlement Agreement executed by Plaintiffs
3 and Defendants provided that Defendants contracted, covenanted and agreed not to take any
4 action to harm the value of the 1201 Westlund Property and/or 1207 Westlund Property or to
5 deprive Plaintiffs of their secured interest in the 1201 Westlund Property and/or 1207 Westlund
6 Property.

7 **THE COURT FURTHER FINDS** that the Settlement Agreement executed by Plaintiffs
8 and Defendants provided that Defendants contracted, covenanted and agreed to provide to
9 Plaintiffs proof of property insurance for 1201 Westlund Property and 1207 Westlund Property
10 sufficient to protect Plaintiffs' secured interests therein.

11 **THE COURT FURTHER FINDS** that the Settlement Agreement executed by Plaintiffs
12 and Defendants provided that Defendants contracted, covenanted and agreed to provide to
13 Plaintiffs a copy of the lease agreement with the tenant(s) for the 1207 Westlund Property.

14 **THE COURT FURTHER FINDS** that the Settlement Agreement executed by Plaintiffs
15 and Defendants provided that Defendants contracted, covenanted and agreed to provide to
16 Plaintiffs any other information required for Plaintiffs to allow Plaintiffs to protect Plaintiffs'
17 interest in the 1201 Westlund Property and 1207 Westlund Property.

18 **THE COURT FURTHER FINDS** that the Settlement Agreement executed by Plaintiffs
19 and Defendants provided that after performance of all of the terms of the Settlement Agreement
20 that the Parties agreed to dismiss the instant Action, as well as Nevada Supreme Court Case
21 Numbers 75520 and 76185.

22 **THE COURT FURTHER FINDS** that the Settlement Agreement executed by Plaintiffs
23 and Defendants provided that after performance of all of the terms of the Settlement Agreement
24 that the Parties would agree to a global mutual release of all claims as between Plaintiffs and
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1 Defendants.

2 **THE COURT FURTHER FINDS** that the Settlement Agreement executed by Plaintiffs
3 and Defendants provided that all Parties would bear their own attorneys fees and costs, except as
4 identified in the Settlement Agreement.

5 **THE COURT FURTHER FINDS** that upon the filing the report by the Nevada
6 Supreme Court Settlement Judge that the Nevada Supreme Court to dismiss the appeals in
7 Nevada Supreme Court Case Numbers 73520 and 76185 and returned those matters to the Eighth
8 Judicial District Court.

9
10 **THE COURT FURTHER FINDS** that the evidence shows that Defendants did not
11 comply with any of the terms of the Settlement Agreement.

12 **THE COURT FURTHER FINDS** that Defendants have failed to make any settlement
13 payments pursuant to the Settlement Agreement and have breached the Settlement Agreement.

14 **THE COURT FURTHER FINDS** that Defendants have breached the Settlement
15 Agreement and have failed to collateralize the settlement obligations by Deeds of Trust on both
16 the 1207 Westlund and 1201 Westlund properties for the settlement sum of \$200,000.00 as
17 contracted covenanted and agreed.

18
19 **THE COURT FURTHER FINDS** that Defendants have breached the settlement
20 agreement as entered between the Parties.

21 **THE COURT FURTHER FINDS** that Defendants agreed pursuant to the Settlement
22 Agreement that interest would accrue at a rate of 7.0% per annum from November 13th, 2018.

23
24 **THE COURT FURTHER FINDS** that Defendants have filed an Opposition and have
25 argued before this Court that the Settlement Agreement entered by and between Plaintiffs and
26 Defendants is valid and enforceable.

CONCLUSIONS OF LAW

THE COURT HEREBY FINDS that the Settlement Agreement executed by Plaintiffs and Defendants in the Nevada Supreme Court Settlement Program is duly entered, executed and binding Agreement on Defendants. Szilagyi v. Testa, 99 Nev. 834, 673 P.2d 495 (1983); Casentini v. Hines, 97 Nev. 186, 623 P.2d 1174 (1981). Willerton v. Bassham, 111 Nev. 10, 889 P.2d 823 (1995), E.D.C.R. 7.50.

THE COURT FURTHER FINDS that the District Court has the authority to enter Judgment upon and to enforce the terms of a Settlement Agreement. May v. Anderson, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005).

THE COURT FURTHER FINDS that the parties agreed to the Settlement Agreement's material terms, even though the exact language was to be finalized later. May v. Anderson, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005).

THE COURT FURTHER FINDS that there is no question as to what claims were being settled and what the terms and conditions of settlement were as against Defendants and that the Settlement Agreement should be reduced to Judgment and settlement terms enforced as against Defendants and each of them.

THE COURT FURTHER FINDS that the Court can keep jurisdiction to enforce the terms of the Settlement Agreement and to reduce the Settlement Agreement to Judgment and is not required to dismiss the Action prior to performance of the terms of the Settlement Agreement by Defendants.

THE COURT FURTHER FINDS that Defendants have failed to timely pay the Settlement Sum of Two Hundred Thousand Dollars.

THE COURT FURTHER FINDS that Defendants breached the Settlement Agreement have failed to draft, execute, record or collateralize the settlement obligations by Deeds of Trust

1 on both the 1207 Westlund and 1201 Westlund properties for the settlement sum of \$200,000.00
2 as contracted covenanted and agreed by Defendants.

3 **THE COURT FURTHER FINDS** that the issue of the contempt of this Court's Orders
4 has now returned before the jurisdiction of this Court.

5 **THE COURT FURTHER FINDS** that this Court ordered Defendants RAMSEY and
6 CHAMBERS to deposit the rents with this Court and that Defendants have failed and refused to
7 comply with the Order of this Court.

8 **THE COURT FURTHER FINDS** that pursuant to NRS 22.100(3), if a Defendant is
9 found guilty of contempt, the Court is allowed to require Defendant to pay "reasonable expenses,
10 including, without limitation, attorney's fees, incurred by the party as a result of the contempt."

11 **THE COURT FURTHER FINDS** pursuant to NRS 18.010(2)(b) that, without regard to
12 the recovery sought, when the court finds that the defense of the opposing party was brought or
13 maintained without reasonable ground or to harass the prevailing party, the Court may award the
14 prevailing party with its attorneys' fees and that the court shall liberally construe the provisions
15 of this paragraph in favor of awarding attorney's fees in all appropriate situations to punish for
16 and deter frivolous or vexatious defenses because such defenses overburden limited judicial
17 resources, hinder the timely resolution of meritorious claims and increase the costs of engaging
18 in business and providing professional services to the public.

19 **THE COURT FURTHER FINDS** that NRS 18.020 provides that a prevailing party in
20 any action in which more than \$2,500 is recovered is entitled to recover its costs.

21 **THE COURT FURTHER FINDS** that the Settlement Agreement expressly stated that
22 any costs incurred in filing or preparing these documents will be the responsibility of Defendants,
23 who will prepare and record the deeds of trust on a form acceptable to Plaintiffs.
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1 THE COURT FURTHER FINDS that, by their delays and actions, Defendants have
2 acted in a contemptuous manner.

3 THE COURT FURTHER FINDS that Plaintiffs should be awarded the sum of Twenty
4 Thousand Dollars (\$20,000.00) as sanctions for Defendants' contempt and failure to comply with
5 the Settlement Agreement and in having the Settlement Agreement reduced to Judgment.

6 THE COURT FURTHER FINDS that Plaintiffs should be awarded the sum of
7 \$1,735.99 for attorneys' fees and costs for Defendants' contempt and failure to comply with the
8 Settlement Agreement and in having the Settlement Agreement reduced to Judgment.
9

10 JUDGMENT

11 THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
12 Plaintiffs' Motion to Enforce Settlement shall be and hereby is GRANTED.

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the foregoing terms
14 of the Settlement Agreement as entered and executed by Plaintiffs and Defendants as placed on
15 the record shall be and hereby are enforced and reduced to Judgment in favor of Plaintiffs
16 EUGENE TUMBARELLO and SHAMROCK PAINTING and against Defendants ELIZABETH
17 RAMSEY and GREGG CHAMBERS.
18

19 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs shall be
20 awarded an enforceable and secured interest in the 1207 Westlund Drive, Las Vegas, Nevada
21 89102, also identified as Clark County Assessor's Parcel Number 162-05-513-036 in the sum of
22 \$221,735.99 and that this sum shall be and hereby is further reduced to Judgment in favor of
23 EUGENE TUMBARELLO and SHAMROCK PAINTING and against Defendants ELIZABETH
24 RAMSEY and GREGG CHAMBERS.
25

26 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs shall be
27 awarded an enforceable and secured interest in and to 1201 Westlund Drive, Las Vegas, Nevada
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1 89102, also identified as Clark County Assessor's Parcel Number 162-05-513-035 in the sum of
2 \$221,735.99 and that this sum shall be and hereby is further reduced to Judgment in favor of
3 EUGENE TUMBARELLO and SHAMROCK PAINTING and against Defendants ELIZABETH
4 RAMSEY and GREGG CHAMBERS.

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the sum of
6 \$221,735.99 as reduced to Judgment shall continue to accrue post-judgment interest from the
7 date of the entry of the Judgment until paid in full.
8

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the total Judgment
10 Sum for enforcement of the Settlement Agreement shall be \$221,735.99, that this Judgment Sum
11 shall constitute a deed of trust lien on the 1207 Westlund property and 1201 Westlund property
12 and shall accrue post-judgment interest in accordance with the terms of this Judgment.

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the
14 recordation of this Order reducing the Settlement Agreement to Judgment, that Plaintiffs shall
15 substitute this Order and Judgment for the lls pendens recorded as against the 1207 Westlund
16 property and 1201 Westlund property.
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1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Order and
2 Judgment shall be considered a final adjudication of all claims, counterclaims, cross-claims and
3 affirmative defenses raised by all Parties.

4 DATED AND DONE this 5th day of March, 2019.

7 Will Kyte
8 DISTRICT COURT JUDGE
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10 

15 Submitted by:
16 PREMIER LEGAL GROUP

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